

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Licenses of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	FCC File Nos. D133825, D134193,
NETWORK, INC.)	D134194, D134195, D134196, D134197,
)	D134370, D134371, and D134372
To Operate Temporary Industrial/Business)	
Conventional Stations WPPY931, WPPZ712,)	
WPPY935, WPPZ716, WPPZ719, WPPY937,)	
WPPZ660, WPPZ661 and WPPZ662 in the Los)	
Angeles, California Area)	

ORDER ON FURTHER RECONSIDERATION

Adopted: June 17, 2002

Released: June 19, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On November 16, 2001, National Science and Technology Network, Inc. (NSTN) filed a petition for reconsideration of an October 17, 2001 *Order on Reconsideration*¹ of the Public Safety and Private Wireless Division (Division).² In the *Order on Reconsideration*, the Division granted a petition for reconsideration filed by Mobile Relay Associates (MRA), set aside the grant of six licenses to NSTN,³ and held that three other licenses issued to NSTN had cancelled automatically.⁴ For the reasons discussed below, we deny the NSTN Petition.

II. BACKGROUND

2. During the period of November 12, 1999 through November 22, 1999, NSTN filed nine applications seeking authorization to operate private land mobile radio (PLMR) stations in the 450-470 MHz and 470-512 MHz bands.⁵ On February 17, 2000, MRA filed an informal objection relating to the

¹ See National Science and Technology Network, Inc., *Order on Reconsideration*, 16 FCC Rcd 18719 (WTB PSPWD 2001) (*Order on Reconsideration*).

² Petition for Reconsideration (filed Nov. 16, 2001) (NSTN Petition).

³ The six licenses were for Stations WPPY931, WPPZ712, WPPY935, WPPZ716, WPPZ719 and WPPY937.

⁴ The three licenses were for Stations WPPZ660, WPPZ661 and WPPZ662.

⁵ NSTN Application File Nos. D133825 (filed Nov. 12, 1999), D134193 (filed Nov. 18, 1999), D134194 (filed Nov. 18, 1999), D134195 (filed Nov. 18, 1999), D134196 (filed Nov. 18, 1999), D134197 (filed Nov. 18, 1999), D134370 (filed Nov. 22, 1999), D134371 (filed Nov. 22, 1999) and D134372 (filed Nov. 22, 1999).

nine subject NSTN applications.⁶ During the period of March 22, 2000 through April 5, 2000, NSTN's nine applications were granted without resolving the informal objection.⁷ The Commission neither placed the grant of NSTN's applications on public notice, nor notified MRA of the grant of NSTN's applications. On June 30, 2000, MRA filed a petition requesting the set-aside of the nine authorizations issued to NSTN.⁸ MRA alleged that NSTN's true intent in filing the nine applications was to circumvent the Commission's frequency coordination, licensing and construction requirements, to enable it to operate temporary stations at fixed locations, in violation of Section 90.137 of the Commission's Rules.⁹ Pursuant to the Commission's rules governing operation of PLMR facilities, NSTN had one year from the date the licenses were granted to construct the stations.¹⁰ In June 2001, MRA requested cancellation of the nine stations that were the subject of the MRA Petition, alleging that NSTN failed to construct the stations.¹¹

3. On October 17, 2001, the Division granted the MRA Petition and set aside the licenses for Stations WPPY931, WPPZ712, WPPY935, WPPZ716, WPPZ719, and WPPY937.¹² The Division determined that the underlying applications for the six stations were defective because they proposed to operate on 6.25 kHz offset channels with a bandwidth of 11.3 kHz while the applicable rules limit the bandwidth for such operations to 6 kHz. Furthermore, with respect to the remaining three stations that were the subject of the MRA Petition, namely, stations WPPZ660, WPPZ661 and WPPZ662, the Division found that these licenses had cancelled automatically because according to the terms of the license, NSTN was required to construct those stations by April 4, 2001,¹³ yet such stations could not have been timely constructed because there was no type-certified 6 kHz equipment prior to July 13, 2001. On November 16, 2001, NSTN filed the instant Petition.¹⁴

⁶ See February 2000 Informal Objection.

⁷ The licenses for Stations WPPY931, WPPY935 and WPPY937 were granted on March 22, 2000. The licenses for Stations WPPZ660, WPPZ661 and WPPZ662 were granted on April 4, 2000. The licenses for Stations WPPZ712, WPPZ716 and WPPZ719 were granted on April 5, 2000.

⁸ MRA Petition for Reconsideration (filed June 30, 2000) (MRA Petition) at 1-2. NSTN filed an opposition to the Petition on July 10, 2000. Opposition to Petition (filed July 10, 2000). MRA filed a reply to the Opposition to Petition on July 11, 2000. Reply to Opposition to Petition (filed July 11, 2000). MRA supplemented its Petition on December 15, 2000. Supplement to Petition (filed Dec. 15, 2000).

⁹ MRA Petition at 2-4.

¹⁰ 47 C.F.R. § 90.155(a).

¹¹ Request for Cancellation of Licenses (filed June 22, 2001) (Cancellation Request). NSTN filed an opposition to the Cancellation Request on June 25, 2001. Opposition to Cancellation Request (filed June 25, 2001). MRA filed a Reply to NSTN's Opposition to the Cancellation Request on July 5, 2001. Reply to Cancellation Request (filed July 5, 2001). NSTN filed a response to the Reply to Cancellation Request on July 16, 2001. Response to Reply to Cancellation Request (filed July 16, 2001).

¹² See *Order on Reconsideration*, 16 FCC Red at 18721-2 ¶ 7.

¹³ See 47 C.F.R. § 90.155(c).

¹⁴ MRA filed an opposition to the Petition on December 14, 2001. MRA Opposition to Petition for Reconsideration (filed Dec. 14, 2001). NSTN filed a reply to MRA's Opposition on January 9, 2002. NSTN Reply to Opposition to Petition for Reconsideration (filed Jan. 9, 2002).

III. DISCUSSION

4. NSTN asserts that the Division's conclusion that the MRA Petition was timely was erroneous because MRA was not entitled to a ruling on its Informal Objection.¹⁵ While we agree with NSTN that the Commission is not obligated to consider the merits of an informal objection, its argument is nevertheless misplaced because our finding that the MRA Petition was timely was not based on the fact that MRA did not receive a ruling on its Informal Objection. Rather, our decision was based on the fact that MRA was not served with our decision granting NSTN's applications. NSTN points to our decision in *Jonach Electronics*¹⁶ as support for its argument that MRA was not entitled to notice of our decision. However, the *Jonach* case is inapposite to the instant case. The petitioner in *Jonach* filed a petition for reconsideration of the grant of Jonach's license outside of the thirty-day filing period. The petitioner argued that because it was adversely affected by Jonach's license grant, the time for appealing the grant did not begin to run until it received actual notice of the grant. Inasmuch as the petitioner in *Jonach* did not file any type of opposition or objection to Jonach's application, or participate in the proceeding in any way, we concluded that the petitioner was not entitled to special notice of our decision.¹⁷ In contrast, MRA did participate in the earlier proceeding, and as such was entitled to notice of the Commission's decision. Therefore, we find that the holding in *Jonach* is inapplicable to the instant case.

5. NSTN further asserts that MRA lacked standing to file its petition because it was not a party to the licensing proceedings, and thus was not entitled to notice of our decision. We disagree because NSTN's argument confuses the meaning of "party" for purposes of our *ex parte* rules with the term "party-in-interest" as used with respect to petitions to deny as provided for in Section 309(d) of the Act.¹⁸ MRA was a "party" for purposes of our *ex parte* rules because it filed a written submission referencing NSTN's pending filing, and served such submission on NSTN.¹⁹ Under our Rules, Commission actions must be served on parties to a proceeding.²⁰ Inasmuch as MRA submitted a written submission, to wit, an Informal Objection to NSTN's pending license application, it was a party to this proceeding, and was thus entitled to receive notice of our action in this matter. Our failure to provide such notice amounted to extraordinary circumstances warranting the acceptance of the MRA Petition outside of the routine thirty-day filing period for such petitions.²¹ The question of whether MRA had standing to file a petition to deny against NSTN's application is irrelevant here because MRA's filing was an informal objection, not a petition to deny.²² MRA was not required to demonstrate standing to file an informal objection.²³

¹⁵ NSTN Petition at 3.

¹⁶ *Jonach Electronics, Order on Further Reconsideration*, 16 FCC Rcd 13094 (WTB PSPWD 2001).

¹⁷ *Id.* ¶ 9.

¹⁸ 47 U.S.C. § 309(d).

¹⁹ 47 C.F.R. § 1.1202(d)(1).

²⁰ 47 C.F.R. § 0.445(a).

²¹ *See Gardner v. FCC*, 530 F.2d 1086 (DC Cir. 1976).

²² PLMR applications are not subject to the formal procedures associated with petitions to deny as set forth in Section 1.939 of the Commission's Rules. 47 C.F.R. § 1.939. Rather, objections to such applications are (continued....)

6. Moreover, NSTN asserts that the instant case creates serious adverse consequences for the licensing process, because an entity with little or no interest in the outcome of a case may secure party status by simply filing an informal protest on which the Commission need not rule.²⁴ However, NSTN has failed to articulate any such adverse consequences. As NSTN acknowledges, there is no requirement that we rule on such filings; hence, such filings need not delay the licensing process. The most that is required of the Commission in such instances is the mailing of our decision to the objecting party. We believe that providing notice of a decision, in accordance with our Rules, does not constitute a burden, and serves the critical function of ensuring that all parties to a proceeding are duly and properly notified of our actions. Further, we believe that NSTN has failed to demonstrate that this practice jeopardizes or affects the stability and integrity of granted licenses.

7. We also disagree with NSTN's argument that our *Order on Reconsideration* was overly broad. NSTN argues that we incorrectly set aside licenses having ninety-nine channels because only a small number of channels were in dispute.²⁵ NSTN argues that any relief granted to MRA should be limited to the deletion of only those channels adjacent to those licensed to MRA.²⁶ However, this argument ignores the reason NSTN's applications were dismissed—namely, that the applications themselves were defective. NSTN proposed to use frequencies in the 450-512 MHz band with a bandwidth of 11.3 kHz. However, requests to operate on the 6.25 kHz offset channels may not propose operation with a bandwidth greater than 6 kHz.²⁷ Consequently, the operations proposed for these licenses were in direct violation of our rules and were *per se* defective. Thus, it was unnecessary to consider the individual channels in reaching our decision, and the applications were properly dismissed.

8. Finally, we find that NSTN's argument with regard to the three cancelled licenses also lacks merit. NSTN does not challenge the factual basis for our action, *i.e.*, that it has not constructed these stations. Rather, NSTN asserts that we must either extend the construction period for the stations associated with these licenses, or cancel all 6.25 kHz offset channel licenses older than one year for failure to construct.²⁸ NSTN further asserts that we should grant a blanket extension of time to construct stations for all licensees of all stations proposing to use 6.25 kHz offset channel equipment, due to the continued lack of type-certified equipment. As support for its position, NSTN cites to the Commission's action granting 220 MHz band licensees a blanket extension of the applicable construction deadlines, due

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governed by the Commission's informal request rules set forth in Section 1.41. 47 C.F.R. § 1.41. *See* Landlinx Communications, *Second Order on Reconsideration*, 15 FCC Rcd 24932, 24933 ¶ 4 (2000).

²³ 47 C.F.R. § 1.41. *See, e.g.*, Applications of WINV, Inc., Assignor, and WGUL-FM, Inc., Assignee, *Memorandum Opinion and Order*, 14 FCC Rcd 2032 ¶ 2 (1998); Nextel License Holdings 4, Inc., *Order*, DA 02-876 ¶ 16 (rel. Apr. 16, 2002).

²⁴ NSTN Petition at 7.

²⁵ NSTN Petition at 8-9.

²⁶ *Id.*

²⁷ *See Refarming R&O*, 10 FCC Rcd at 10094, 10114-5, ¶¶ 27, 76. In the 450-470 MHz band, this limitation is codified at 47 C.F.R. § 90.20 n.44 and 47 C.F.R. § 90.35 n.33. In the 470-512 MHz band, this limitation is not codified in a specific rule because the specific frequencies available in that band are not listed in the Commission's Rules.

²⁸ NSTN Petition at 10.

to difficulties in acquiring the necessary equipment. We disagree. The cancellation of NSTN's licenses occurred as a matter of law, upon expiration of the construction period, and required no affirmative conduct on behalf of the Commission.²⁹ To the extent that other similarly situated licensees have not met their construction deadlines, such licenses are also subject to automatic cancellation without further Commission action, if they fail to file a timely extension request or file such request and do not receive favorable action thereon.³⁰ Furthermore, while it is true that the Commission granted a blanket extension of the construction deadline for all non-nationwide 220 MHz stations on several occasions,³¹ the Commission did so in response to timely extension requests. In contrast, NSTN's instant request for an extension comes almost seven months after the expiration of the construction deadline and the resultant automatic cancellation of its licenses.

9. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed on November 16, 2001, on behalf of National Science and Technology Network, Inc. IS DENIED.

²⁹ 47 C.F.R. § 90.155(a). See Southern California Gas Company, *Memorandum Opinion and Order*, 14 FCC Rcd 17259 ¶ 2 (WTB PSPWD 1999).

³⁰ See County of Alamance, North Carolina, *Order*, 13 FCC Rcd 23335 (WTB PSPWD 1998) (difficulty in obtaining equipment alone is not a compelling circumstance warranting extension of a construction period).

³¹ See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Order*, 9 FCC Rcd 1739 (1994) (Bureau extended the construction deadline to December 2, 1994); Private Radio Bureau Extends Time to Construct Non-Nationwide 220 MHz Stations Through April 4, 1995 and Lifts Freeze for Applications to Modify Site Locations, Public Notice, 10 FCC Rcd 744 (1994) (Bureau extended the construction deadline to April 4, 1995); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Order*, 10 FCC Rcd 3356 (1995) (Bureau extended the deadline to December 31, 1995); Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, *Order*, 11 FCC Rcd 9710 (1995) (Bureau further extended the construction deadline contingent upon the closure of the Commission as a result of any furlough of Federal Government employees. The ensuing 23-day Federal furlough resulted in an extension of the construction deadline to February 2, 1996, pursuant to a formula established in the Bureau Order).

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau